

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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November 9, 2015

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**Executive Director**

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RE: Final Report Relative to Proposed Rules and Amendments  
Regarding Complaints, Investigations and Adjudication;  
Rules of Procedure; LAC 46:XLV Chapters 97 and 99

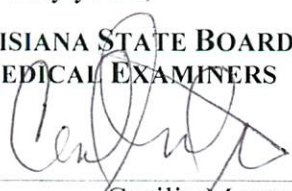
Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners is submitting the enclosed report on the final adoption of captioned rule amendments. Notice was previously published in the September 2014 edition of the *Louisiana Register*, Vol. 41, No. 09, pp. 1813-1817. The Board plans to adopt the rules and amendments by and upon publication in the December 20, 2015, edition of the *Louisiana Register*.

Very truly yours,

**LOUISIANA STATE BOARD OF  
MEDICAL EXAMINERS**

By: \_\_\_\_\_

  
Cecilia Mouton, M.D.  
Executive Director

Enclosure

**FINAL REPORT RELATIVE TO ADOPTION AND  
AMENDMENT OF ADMINISTRATIVE RULES GOVERNING  
COMPLAINTS, INVESTIGATIONS AND ADJUDICATION**

(La. Rev. Stat. § 49:968(D))

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By The  
LOUISIANA STATE  
BOARD OF MEDICAL EXAMINERS

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Submitted To The  
COMMITTEE ON HEALTH AND WELFARE,  
LOUISIANA SENATE,  
  
COMMITTEE ON HEALTH AND WELFARE,  
LOUISIANA HOUSE OF REPRESENTATIVES,  
  
PRESIDENT OF THE SENATE  
  
And  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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November 9, 2015

**FINAL REPORT RELATIVE TO PROPOSED ADOPTION  
AND AMENDMENT OF ADMINISTRATIVE RULES GOVERNING  
COMPLAINTS, INVESTIGATIONS AND ADJUDICATION**

Nov. 9, 2015

(La. Rev. Stat. § 49:968(D))

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**Introduction**—This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the “Board”), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

In accordance with Act No. 441, adopted in 2015 by the Louisiana Legislature enacting La. Rev. Stat. §37:1285.2, by Notice of Intent published in the September 20, 2015, edition of the *Louisiana Register*, Vol. 41, No. 09, pp. 1813-1817, the Board proposed to adopt rules governing the investigation of complaints against physicians, LAC 46:XLV, Subpart 5 (Rules of Procedure), Chapter 97, Complaints and Investigations, §§9701-9713; and make various changes to its existing rules on adjudication, Chapter 99 Adjudication. Concurrently with submission of the Notice of Intent, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.<sup>1</sup> Comments were subsequently received from a Louisiana State Representative and one (1) organization, the Louisiana State Medical Society (the “LSMS”).

A public hearing was held on October 26, 2015.<sup>2</sup> Two (2) individuals appeared and presented oral comments and Rep. K. Jackson (an author of the legislation that became Act 441), requested that her written comments be made part of the record in lieu of her live testimony, as she was engaged in an ongoing trial in another Parish.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), sets forth a summary of the comments received by the Board on the subject administrative rules and amendments and a statement of the Board's response to each comment, including a concise statement of the principal reasons for and against adoption of any modifications or changes suggested. A copy of the Notice of Intent published in the September 20, 2015 edition of the *Louisiana Register* accompanies this Report as Appendix A, in the identical form previously published, which the Board intends to adopt as final rules and formally promulgate by and upon publication in the December 20, 2015 edition of the *Register*.

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<sup>1</sup>*Electronic Mail*, Cecilia Mouton, M.D., Exec. Dir., La. State Bd. Med. Exam., RE: Report Relative to Proposed Rules and Amendments Regarding Complaints, Investigations and Adjudication; Rules of Procedure; LAC 46:XLV Chapters 97 and 99 (Sept. 9, 2015).

<sup>2</sup>Notice of the public hearing on the proposed rules for complaints and investigations was: (i) included within the Notice of Intent in the September 20, 2015 *Register*; (ii) a separate notice was posted on the front door of the Board's office; (iii) an additional notice was prominently included on the top of the first page of the Board's October 2015 agenda (the Board's October 2015 meeting started that same day) which was posted on the front door of the Board's offices and on the Board's web page. All rulemaking projects of the Board are included on the Board's agenda as were the proposed rules on complaints and investigation and the new rule effort to amend the current rule project. In addition, the date and time of the public hearing was included in the agenda section dealing with rulemaking projects of the Board.

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**I. Background**—The Board proposes to adopt new rules and amend certain existing rules in furtherance of Act No. 441 of the 2015 Session of the Louisiana Legislature.

**II. Summary of Proposed Rules**—Act No. 441 of the 2015 by the Louisiana Legislature enacting La. Rev. Stat. §37:1285.2, amended the Louisiana Medical Practice Act, La. Rev. Stat. §37:1261 et seq. (the "Act"). Among other items, La. Rev. Stat. §37:1285.2A provides that any staff member of the Board, except the executive director may act as the lead investigator for any complaint received by the Board regarding a physician or any complaint initiated on its own motion. La. Rev. Stat. §37:1285.2.C provides that any decision of the Board in an adjudication hearing be supported by a preponderance of the evidence. The proposed rules and changes to existing rules address these requirements of La. Rev. Stat. §37:1285.2. Section 9707B provides that the executive director may not act as lead investigator on any complaint or investigation. Section 9923F provides that any final decision must be supported by a preponderance of the evidence.

The proposed rules and changes also address the requirements specified by La. Rev. Stat. §37:1285.2B(1)-(11), respecting the promulgation of rules identifying procedures to be used for complaints, investigations and adjudications of physicians by, among other items, providing for: notice of any investigation no later than five business days after the Board's formal investigation is initiated by a majority vote of the Board members present and voting (9711A, B); time limits for initiating and completing investigations and scheduling hearings (9709D, 9711H and existing rule 9905A); informal settlements and consent decrees (9713 and repealing existing rule 9925); notice of an adjudicatory hearing (existing rule, 9905B); pleadings and other motions (existing and proposed amendments to 9909-9915); discovery; subpoenas and subpoenas duces tecum (9916 and existing rule 9917); representation of a physician by counsel of choice (9709B.3.b, 9711B and 9907B); prehearing conferences (9919); procedures for conducting adjudicatory hearings (9921, 9923); and notice of the final decision to the physician (existing rule 9927). The proposed rules and changes also provide: applicable definitions (9703); complaint origination (9705); complaint processing (9707); preliminary review (9709); formal investigation (9711); informal settlements and consent orders (9713); and recusal (9920) and make other changes for purposes of consistency.

**III. Summary of the Comments and Board Response**—As noted above, the Board received one (1) written comment (from the LSMS), the oral comments of two (2) commenters (the LSMS and an individual commenter), and the written comments in lieu of live testimony from Rep. K. Jackson, who engaged the Board's executive director during the comment period concerning certain proposed changes to

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the proposed rules. However, given the directive of Act 441 to “adopt” rules “no later than January 1, 2016,” changes within the context of the current rulemaking effort were not feasible. Therefore, suggestions offered by Rep. K. Jackson’s were incorporated into a draft (Appendix B) and placed on the Board’s October 26, 2015 meeting agenda for consideration as a new rulemaking effort. During its meeting the Board voted to move forward with the new rulemaking effort to affect the changes suggested by Rep. K. Jackson and hold a another meeting to consider and discuss whether to accept or reject the other comments as part of the new rulemaking effort. A meeting for that purpose was held on November 9, 2015.

The Board anticipates publishing the final rules on the current rulemaking effort, in the identical form as previously noticed, in the December 2015 *Register*. It also plans to submit Notice of Intent of its new rulemaking effort in the December 2015 *Register* as well.

Summaries of the comments, as well as the Board’s responses to each, are set forth below.

**Commenter A. (Hon. Rep. K. Jackson).** As noted above, the proposed changes suggested by Rep. K. Jackson were memorialized in a draft submitted to the Board,<sup>3</sup> and are reflected in Appendix B. The suggestions were:

Comment 1. to delete §9707C, relative to the issuance of subpoenas, reinstating it in 9711C (formal investigations) and list the items that may be subpoenaed during a preliminary review in 9709B.1.

*Response.* The suggestion to delete 9707C and restate the Board’s broad authority to issue subpoenas in connection with formal investigations (9711C), while listing the items subject to subpoena during preliminary reviews (9709B.1), is structurally more consistent with the nature and scope of a formal *investigation* versus a *preliminary review* than the current wording of the proposed rule. The suggested changes are included in the Board’s new rulemaking effort.

Comment 2. to delete §9707C, relative to securing sworn testimony by subpoena during a preliminary review and instead specify in 9709B.1 that affidavits may be obtained to preserve the testimony of a complaint and complaint witness.

*Response.* Again, the suggestion to utilize affidavits rather than subpoenas to preserve testimony of the specified individuals during a preliminary review (9709B.1) is more consistent with the nature and scope of a *preliminary review* versus a formal

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<sup>3</sup>Corr. and attachment, Hon. Rep. K. Jackson, to Mark Dawson, M.D., Pres., La. St. Bd. Med. Exam. (Oct. 26, 2015).

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*investigation.* The suggested changes are included in the Board's new rulemaking effort.

Comment 3. in §9709F.1., to delete the words "~~a formal investigation shall be commenced in accord with 9711 of these rules~~" and add in its place, "the board shall direct the board's staff to undertake such additional review as may be necessary or indicated within a specified period of time."

*Response.* Under the rules as currently proposed (9711F.1), if a recommendation made by Board staff to close a preliminary review is not approved by the Board a formal investigation must be commenced. The suggested change would provide flexibility to gather additional information to support the recommendation within a specified period of time in lieu of automatically commencing a formal investigation. The suggested changes are included in the Board's new rulemaking effort.

Comment 4. in §9711G, that the rules identify and limit the potential participants to conferences with Board staff.

*Response.* Identifying those who may participate in conferences may eliminate licensee apprehension, and lead to a better understanding of the process. The suggested change is included in the Board's new rulemaking effort.

Comment 5. in §9711H, to reduce the period for completing a formal investigation from 36 to 24 months.

*Response.* While some investigations take longer than 24 months, the majority are concluded within 24 months. Given the desire to thoroughly investigate, yet conclude investigations as quickly as possible, and considering the Board's ability to approve more time for satisfactory cause, the suggested change is included it in the Board's new rulemaking effort.

Comment 6. to adopt a new rule providing that the position of executive director and lead investigator are separate positions.

*Response.* Act 441, La. Rev. Stat. §37:1285.2, provides that "Any staff member of the board, except the executive director, may be appointed to act as the lead investigator for any complaint regarding a physician received by the board or any investigation regarding a physician initiated by the board upon its own motion." Section 9707B of the proposed rules replicates this requirement. Nevertheless, it has been the Board's expressed intent that the duties of these two positions (executive director and director of investigations) be performed by different individuals. Because the suggested change is consistent with the Board's intent and in harmony with the proposed requirements of 9707B, the suggested change is included in its new rulemaking effort.

**Commenter B. (the LSMS),** offered the following written and oral comments:

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Comment 7. §9709. In its written comments to the Board,<sup>4</sup> the LSMS expressed its appreciation for one of the several changes that the Board accepted at its August 2015 meeting to the draft of the proposed rules at its request (before being noticed in the *Register*), adding qualifying language which limits the information and documents gathered in a preliminary review to those needed to determine if the complaint is jurisdiction and whether sufficient cause exists to warrant formal investigation (9709B.1).

*Response.* The Board noted its appreciation for the LSMS' comment.

Comment 8. §9711. In written comments, the LSMS suggested that the time frame for concluding a formal investigation be reduced to 12 months, while maintaining the Board's ability to increase the time for satisfactory cause (9711H). In its oral comments at the public hearing the LSMS repeated this request but expressed appreciation for undertaking a change to reduce the period to 24 months.

*Response.* See response to Comment 5. An amount of time less than 24 months could interfere with the Board's ability to properly perform its duties, especially in complex cases. The suggestion is declined.

Comment 9. §9711. In written and oral comments the LSMS reiterated its prior request that in to avoid any confusion or misunderstanding regarding consent orders, any informal meeting involving the discussion of a consent order with Board staff be recorded at the request of a physician.

*Response.* Recording an informal conference could inhibit the free flow of information and frank discussion such a conference is designed to provide and measures are taken to insure a proper understanding. Generally, if a consent order is proposed during an informal conference, it is prepared and mailed after the meeting to the physician (or counsel if represented), who is asked to review the document to his/her satisfaction, contact staff with questions or for further discussion and sign and return if it meets the physician's approval. The physician is also informed that Board approval is required and of the public nature of an approved order. For these reasons, the suggestion is declined.

**Commenter C. (individual commenter<sup>5</sup>)**

As a result of a technical failure, a portion of this commenter's comments was not captured on the audio recording of the public hearing. While unaware of this mishap at the time the commenter was asked and agreed to provide a written summary of the

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<sup>4</sup>Corr., Mr. Wes Hataway, V-P Legal Affairs, LSMS to La. St. Bd. Med. Exam. (Oct. 20, 2015).

<sup>5</sup>Jennifer Nicaud, Esq.

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comments offered at the hearing. The summary was subsequently received but it contained points other than those discussed, questioned the Board's processes,<sup>6</sup> and raised other matters outside the course of this rulemaking effort. It also included documents and materials that were not offered at the public hearing, or requested by the Board, which we consider to be untimely.

Summaries of the commenter's suggestions<sup>7</sup> are set forth below. For the principal reasons noted, the Board does not accept any of the commenter's suggested modifications or changes. The suggestions are:

Comment 10. §8315-if a board member is acting as an investigator or executive director he/she cannot act as a board member.

*Response.* 8315 deals with the executive director and director of investigations, not Board members, and is part of a new rule effort not yet noticed. The comment is beyond the scope of this rule effort.

Comment 11. §9703-the definition of *Board* should be expanded to address discovery rulings, the roles of independent counsel, president and other issues.

*Response.* This section simply provides definitions. The definition is consistent with the Act and the Board's other rules.

Comment 12. §9703-the definition of *Complaint* be expanded to include rights afforded to criminal defendants.

*Response.* The Board is an administrative regulatory agency, not a criminal enforcement authority. See also response to Comment 16.

Comment 13. §9703-the definition of *Law* include a reference to Act 441.

*Response.* The definition references the Act, which was amended by Act 441.

Comment 14. §9705A-the Board should act on complaints of individuals/agencies and rely on criminal enforcement agencies to find and refer causes of action.

*Response.* The Act does not limit the Board to such sources.

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<sup>6</sup>A review the Introductory Section of this Report details the Board's compliance with all requirements of the Louisiana Administrative Procedure Act, La. Rev. Stat. §49:950 *et seq.* and the Louisiana Open Meetings Law, La. Rev. Stat. §42:11 *et seq.*, as to the public hearing and rulemaking efforts. Any suggestion to the contrary is denied.

<sup>7</sup>The summary provided by the commenter was utilized to supplement the transcript in preparing this Report.



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Comment 15. §9705B-the Board's use of complaint form should be required to comply with the U.S. Constitution's Sixth Amendment in criminal proceedings.

*Response.* Responses to Comments 12 and 16 are responsive to this comment.

Comment 16. §9705C-considering or acting on anonymous complaints is not consistent with confrontation and due process clauses of the U.S. Constitution.

*Response.* A prohibition on investigating/acting on anonymous complaints was removed by the Legislature before Act 441 became law. Such complaints are often filed by individuals who witness physician misconduct but fear retribution or otherwise do not wish to disclose their names (9505D). Prohibiting such complaints would discourage reporting of impaired physicians or unprofessional conduct by physicians. It would have negative implications for public protection and decrease the Board's ability to safeguard the public. Testimony was provided by the Federation of State Medical Boards of the U.S. during discussion of the legislation, that 46 state medical/osteopathic boards currently allow anonymous complaints.

The Board is not a criminal law enforcement authority and cannot be converted into one by analogy to or cooperation with such authorities. Chapter 99 of the Board's rules on adjudication provides physicians due process, the right to confront witnesses and other evidence presented against him/her, and satisfies all requirements of the U.S. and Louisiana Constitutions applicable to state administrative agency adjudications.

Comment 17. §9705D-anonymous complainants must be revealed to satisfy confrontation and due process requirements.

*Response.* Response to Comment 16 is responsive to this comment.

Comment 18. §9707B-expand to include staff.

*Response.* The wording of subsection 9707B was taken from Act 441, La. Rev. Stat. §37:1285.2A.

Comment 19. §9709A-does not specify who performs preliminary review and determines whether a complaint should be investigated.

*Response.* See 9707A, 9707F.

Comment 20. §9709B-there is no provision for 961C peer to peer meeting.

*Response.* See 9711G.1.

Comment 21. §9709B.1-objects to qualifying the provision with the word *may*.

*Response.* The permissive form used for flexibility. A preliminary review may not be undertaken, *See* 9709F.

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Comment 22. §9709B.2- objects to qualifying the provision with the word *may*.

*Response.* The permissive form used for flexibility. It may be unnecessary to contact complainant.

Comment 23. §9709B.3-objects to qualifying the provision with the word *may*.

*Response.* The permissive form used for flexibility. A response may not be necessary to disposition.

Complaint 24. §9709D-exemplifies confrontation and due process issues stemming from criminal investigations.

*Response.* See response to Comment 16.

Comment 25. §9711D and H- conflict by allowing use of prior complaints and investigations to a determine pattern of continuing or recurring conduct that fails to satisfy the standards of medical practice; by allowing more time for formal investigation for satisfactory cause; and may be double jeopardy.

*Response.* The law provides authority to the Board to take action for continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state, La. Rev. Stat. §37:1285A(14). Preventing such use would be inconsistent with the law. Dismissal of an investigation at 24 months when satisfactory cause exists for extension would not be in the public's interest. Double jeopardy bars multiple criminal punishments for the same offense. Administrative disciplinary action by the Board is not criminal punishment.

Comment 26. §9711D-Board members cannot determine the prevailing and usually accepted standards of medical practice; a physician should be able to present expert testimony.

*Response.* As to Board action, see response to Comment 25; physicians can present expert testimony as to the standard of care, *See* 9921B of the Board's rules.

Comment 27. §9711E-evaluation must be mutually selected; manner of payment not noted.

*Response.* The proposed rule is supported by the Act; and the Board's rules, which address payment.

Comment 28. §9711H-*satisfactory cause* is not defined.

*Response.* The meaning of the term is clear—that the reason given justifies, in the Board's view, increased time.

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Comment 29. §9713-whether a matter is pursued by informal or formal disposition should be clarified and sanctions delineated.

*Response.* These comments are beyond the scope of this rulemaking effort.

Comment 30. §9907B-practitioners from other states should be allowed to practice before the Board if associated with a Louisiana practitioner.

*Response.* Louisiana Supreme Court rules address admission requirements for an out-of-state attorney to practice before a Louisiana court or agency. Association with a Louisiana licensed attorney is a requirement of such admission (LSC-Rule XVII Section 13). Compliance with such rules would satisfy the proposed rule.

Comment 31. §9915-separate counsel needed to advise the Board if the independent counsel is making determinations on prehearing motions; the role of all counsel should be delineated; the executive director and staff may not have ex parte communications.

*Response.* Per 9921D of the Board's rules, the role of independent counsel is clear (one who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case). Independent counsel may assist the Board in the manner specified by the existing and proposed rules. As this provision deals with disposition of prehearing motions, the remaining comments are beyond the scope of this rulemaking effort.

Comment 32. §9916-exculpatory material must include the identity of the complainant and any material required under the Jencks Act or Brady.

*Response.* See response to Comment 16.

Comment 33. §9920A-in oral comments, the commenter suggested that recusal should be made part of the written record and made known to the public.

*Response.* Per 9920A, recusal is made part of the record. The wording proposed is identical to that of other Louisiana agencies and in addition to entries concerning recusal in the minutes of Board meetings. The public has access to the Board's public minutes.

Comment 34. §920A-economic bias should be considered before executive session.

*Response.* The proposed rule is broadly worded to include any bias or interest which renders a Board member unable to assure a fair hearing.

Comment 35. 9920-the "proceeding" should be defined from commencement of the action and include participating in discussions and activities outside of the particular proceeding by a recused member.

*Response.* The term "recused from that particular proceeding" is self-explanatory. See La. Rev. Stat. 49:960B.

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Comment 36. §9920-recusal must be disclosed to the public.

*Response.* See response to Comment 33.

Comment 37. §9920-disclosure of recusal should be reported to the Board of Ethics.

*Response.* La. Rev. Stat. §49:960B is instructive when recusal prevents a quorum.

Comment 38. §9920-the Governor should appoint replacements only from the recognized mean of determining a candidate.

*Response.* This is beyond the scope of this rule effort or the Board's authority.

Comment 39. §9921-the order of the proceeding cannot be altered by the presiding officer.

*Response.* Per La. Rev. Stat. §49:956(4) the presiding officer may regulate the course of the hearings.

Comment 40. §9921H-the Board cannot impose time limits in an adjudicatory proceeding.

*Response.* See response to Comment 39.

\* \* \*

NFA Replacement Card (with photo)	\$17
NSF Fee	\$50
Photocopies of document/page	\$0.50
Reciprocity Fee (to another state)	\$50
Reciprocity Fee (to Louisiana)	\$125
Replace License Card	\$12
Replace License (original)	\$50
Replace Registration Certificate or 2nd copy	\$25
Request for CEU Approval (applicant)	\$50
Request for CEU Approval (vender)	\$75
Seminars (per hour of instruction)	\$50
State Exam Fee	\$120
State Exam Retake Fee	\$150

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2504.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:596 (February 2011), amended LR 39:1047 (April 2013), LR 41:96 (January 2015), LR 41:

#### **Family Impact Statement**

The proposed amendments to LAC 46:XLIX.1201 should not have any impact on the family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed amendments to LAC 46:XLIX.1201 should not have any known or foreseeable impact as described in R.S. 49:973.

#### **Provider Impact Statement**

The proposed amendments to LAC 46:XLIX.1201 should not have any known or foreseeable impact as defined by HCR 170 of 2014 Regular Legislative Session.

#### **Public Comments**

Interested persons may submit written comments until 4 p.m. on October 10, 2015 to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, Baton Rouge, LA 70816.

Mark A. Hebert  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Fees and Assessments**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than the rule publication costs, the total of which are estimated to be \$300 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any costs or savings to the Board of Examiners, state or local governmental unit. The proposed rule change increases the annual registration fee for Licensed Nursing Facility Administrators and Administrators in Training in order to provide sufficient revenues for increases in the operating costs of the Board of Examiners.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The Board of Examiners will realize an increase in fees and self-generated revenues of approximately \$42,000 annually.

There is no anticipated effect on the revenue collections of other state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be an increase of \$100 for the initial and annual registration fee, impacting individuals renewing licensure as, or becoming, a Licensed Nursing Facility Administrator or a Licensed Nursing Facility Administrator in Training.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Individuals employed as, or seeking to become, Licensed Nursing Facility Administrators or Licensed Nursing Facility Administrators in Training will realize a \$100 increase in the initial and annual registration fee.

Mark A. Hebert  
Executive Director  
1509#017

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Board of Medical Examiners**

Physician Practice; Complaints and Investigations;  
Adjudication (LAC 46:XLV.Chapters 97 and 99)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended by Act 441 of the 2015 Session of the Louisiana Legislature, the board intends to adopt LAC 46:XLV Chapter 97, which will govern the investigation of complaints against physicians. It also plans to amend various sections of its existing rules relative to adjudication of alleged violations, LAC 46:XLV.Chapter 99. The proposed rules and amendments are set forth below.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions Subpart 5. Rules of Procedure**

#### **Chapter 97. Complaints and Investigations**

#### **§9701. Scope of Chapter**

A. The rules of this Chapter govern the board's processing of complaints and investigations relative to the laws governing the practice of medicine by physicians, other state and federal laws to which physicians are subject and the board's rules. These rules are intended to supplement, but not replace, any applicable provision of the Louisiana Administrative Practice Act, R.S. 49:950 et seq. regarding the disciplinary process and procedures. To the extent that any rule of this Chapter is in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9703. Definitions**

A. As used in this Chapter, the following terms shall have the meanings specified.

**Board**—the Louisiana State Board of Medical Examiners, as established in the Louisiana Medical Practice Act, R.S. 37:1261-1292.

**Complaint**—any information, claim or report of whatsoever kind or nature received or obtained by the board that alleges or may indicate a violation of the law by a licensee.

**Jurisdictional**—a matter within the board's authority under the law.

**Law (or the law)**—unless the context clearly indicates other, the Louisiana Medical Practice Act, R.S. 37:1261-1292, other applicable laws administered by the board and the board's rules, LAC 46:XLV.101 et seq.

**Physician or Licensee**—an individual who holds a current license or permit duly issued by the board to practice medicine in this state pursuant to R.S. 37:1261-1292.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9705. Complaint Origination**

A. Complaints may be initiated by any person or based on information independently developed by the board.

B. The board provides a complaint form on its website, [www.lsbme.la.gov](http://www.lsbme.la.gov), which is to be completed, dated and signed by persons making complaints to the board. Use of the form is preferred but not required.

C. The board shall not take action on an anonymous complaint except when supported by apparently reliable information or evidence provided with the complaint or obtainable from another source.

D. The identity of and communications from a complainant constitute part of a preliminary review or investigative record of the board and shall be maintained in confidence by the board. Confidentiality shall be waived only by written authorization of the complainant, when the complainant will be offered as a witness in a formal administering hearing before the board or as otherwise provided by law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9707. Complaint Processing**

A. The board's staff processes all complaints and conducts all investigations on behalf of the board.

B. Any staff member of the board, except the executive director, may act as the lead investigator on any complaint received by the board regarding a physician or any investigation regarding a physician initiated by the board on its own motion.

C. To obtain evidence of violations of the law or assist in a review or investigation the executive director or a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, such subpoenas as may be required to obtain documents and other information, the appearance of witnesses or sworn testimony.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9709. Preliminary Review**

A. Upon receipt of a complaint a preliminary review may be conducted to determine if the complaint is jurisdictional and whether sufficient cause exists to warrant formal investigation.

B. During a review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1. documents and information which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exist to warrant formal investigation may be gathered and secured;

2. the complainant may be contacted; and

3. the licensee may be provided the opportunity to respond to the complaint or provide related information; provided, at the time of the first communication from the board to a licensee regarding a complaint the licensee shall be provided:

- a. a brief summary of the complaint or alleged violation or a copy of the complaint if authorization has been provided;

- b. notice that the licensee may, at his own expense, retain legal counsel of his choice to represent his interest; and

- c. such other information as may be deemed appropriate.

C. Any information gathered during the preliminary review will be added to the information maintained on the complaint.

D. Preliminary review of a complaint shall be completed as promptly as possible within one-hundred and eighty days of receipt. However, this period may be increased by the board for satisfactory cause and shall not apply to information received from local, state or federal agencies or officials relative to on-going criminal, civil or administrative investigations or proceedings.

E. Nothing in this Chapter requires that a preliminary review be conducted if the complaint or information clearly indicates the need for formal investigation or emergent action.

F. At the conclusion of a preliminary review a determination shall be made as to whether the complaint is jurisdictional and there is sufficient cause for investigation. If the complaint:

1. is not jurisdictional or there is insufficient cause for investigation, a report and recommendation shall be submitted to the board to close the complaint without investigation. If approved by the board, the complainant and the licensee, if the licensee was notified of the preliminary review, shall be notified of the disposition. If not approved by the board, a formal investigation shall be commenced in accordance with §9711 of these rules. A complaint closed after preliminary review shall not be considered an investigation by the board and need not be reported as such by a licensee on subsequent renewal applications to the board.

2. is jurisdictional and there is sufficient cause for investigation, a report and recommendation shall be

submitted to the board to commence a formal investigation. The report shall include:

- a. a brief summary of the complaint or alleged violation;
- b. a statement of the possible violations of the law involved; and
- c. a summary of the licensee's biographical, licensure and disciplinary history on file with the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9711. Formal Investigation**

A. If the board determines by a majority vote of the members present and voting at a board meeting that a complaint warrants investigation it shall instruct board staff to initiate a formal investigation. If the board determines that a complaint does not warrant investigation it shall be closed pursuant to §9709F.1. of this Chapter.

B. Written notice of the investigation including a brief summary of the facts constituting the alleged violation shall be provided to the licensee no later than five business days after the board's formal investigation is initiated by registered, return-receipt-requested mail, as well as by regular first class mail, or by personal delivery or other means, at the most current address for the licensee reflected in the official records of the board. Such notice shall also include the information set forth in §9709B.3.a.-c. of this Chapter.

C. Once a formal investigation is initiated by the board, an investigation shall be undertaken to determine whether or not there is sufficient information and evidence to indicate that a violation of the law has occurred.

D. Past complaints and investigations of a licensee may be utilized in a current investigation for the purpose of determining if there is a pattern of practice or continuing or recurring conduct that fails to satisfy the prevailing and usually accepted standards of medical practice in this state on the part of the licensee.

E. If the complaint giving rise to the formal investigation involves medical incompetency, as part of the investigation a request may be made, or the board may order in a manner prescribed by §365D of these rules, the licensee to undergo a competency evaluation at a third-party evaluation center approved by the board.

F. If the investigation does not provide sufficient information and evidence to indicate that a violation of the law has occurred, a report and recommendation shall be made to the board that the investigation be closed without further action. If the board approves the recommendation, the complainant and the licensee shall be provided written notification of the disposition. If the recommendation is not approved, such further investigation or other action shall be taken as may be necessary or appropriate.

G. If the investigation provides sufficient information and evidence to indicate that a violation of the law has occurred, an administrative complaint may be filed with the board, pursuant to Chapter 99 of these rules, provided one or more of the following conditions exist:

1. a draft administrative complaint, in the form and content specified in §9903B of these rules, has been mailed or provided to the licensee accompanied by a letter providing a reasonable opportunity for a conference to show compliance with all lawful requirements for the retention of the license without restriction, or to show that the complaint is unfounded as contemplated by R.S. 49:961(C); however, the licensee fails to respond to the complaint and letter, waives the opportunity, or the response does not satisfactorily demonstrate lawful compliance or that the complaint is unfounded;

2. informal disposition is attempted but fails to resolve all of the issues and the procedures specified in §9711G.1 of this Section have been provided with the same result described;

3. emergency action is required to pursuant to §9931.

H. Formal investigations shall be completed within thirty-six months after initiated by the board. However, this period may be increased by the board for satisfactory cause and no complaint shall be dismissed solely because a formal investigation was not completed within this period. This period shall also not apply to any investigation pending on July 1, 2015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

#### **§9713. Informal Settlements and Consent Orders**

A. The board may, before, during, or following an investigation, or after filing an administrative complaint, dispose of any complaint through informal disposition.

B. Informal dispositions may take the form of any disposition recognized by R.S. 49:955D, or any other form of agreement which adequately addresses the complaint or matter under review or investigation; provided, however, that such dispositions are considered by the board only upon the recommendation of the board's lead investigator with respect to the investigation and all such dispositions require approval by a majority vote of the board members present and voting at a board meeting.

C. Informal dispositions may be either non-disciplinary or disciplinary:

1. Non-disciplinary dispositions consist of correspondence, an informal conference and a letter of concern. These dispositions shall not constitute disciplinary action, are not a public record of the board and are not reported and distributed in the same manner as final decisions of the board.

2. Disciplinary dispositions consist of consent orders, and other orders and agreements, and stipulations for voluntary surrender of a license. These dispositions shall constitute disciplinary action, shall be a public record of the board, and are reported and distributed in the same manner as final decisions of the board.

D. Any matter may be referred to the board for administrative hearing without first offering an informal disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

## **Chapter 99. Adjudication**

### **§9907. Response to Complaint; Notice of Representation**

A. ...

B. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in this state. Upon receipt of service of a complaint pursuant to this Chapter, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall personally or through such counsel, give written notice to the board of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, complaints, subpoenas, orders, or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:507 (June 1990), amended LR 41:

### **§9915. Disposition of Prehearing Motions**

A. - B. ...

C. The president of the board or presiding officer of the hearing panel, as the case may be, may delegate the task of ruling on prehearing motions to the board's independent legal counsel appointed pursuant to §9921D, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:508 (June 1990), amended, LR 41:

### **§9916. Discovery**

A. After filing and notice of an administrative complaint has been served pursuant to §9905 of this Chapter:

1. the parties or their respective counsel shall, within the time frames established by the prehearing conference order, provide the other with a list of all witnesses and copies of all exhibits that may be offered as evidence at the adjudication hearing. Respondent shall also be provided a copy of any written or recorded statement he may have provided to the board and any exculpatory material the board may possess concerning the respondent;

2. subpoenas and subpoenas duces tecum may be requested pursuant to §9917 of these rules and discovery may be conducted in accordance with the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

### **§9919. Prehearing Conference**

A. In any case of adjudication noticed and docketed for hearing a prehearing conference shall be held among the parties or their respective counsel, together with the board's independent counsel appointed pursuant to §9921.D hereof,

for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

B. Following such prehearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a prehearing stipulation or order which shall include:

1. - 5. ...

6. dates for exchanging and supplementing lists of witnesses and copies of exhibits that may be offered at the hearing and discovery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:509 (June 1990), amended, LR 41:

### **§9920. Recusal**

A. Any board member who, because of bias or interest, is unable to assure a fair hearing shall be recused from that particular proceeding. The reasons for the recusal shall made part of the record. Should the majority of the board members be recused for a particular proceeding, the governor shall be requested to appoint a sufficient number of pro tem members to obtain a quorum for the proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

### **§9921. Conduct of Hearing; Record; Order**

A. - F. ...

G. The order of proceedings in an adjudication hearing is as follows but may be altered at the discretion of the presiding officer or by agreement of the parties:

1. complaint counsel makes an opening statement of what he intends to prove, and what action is sought from the board;

2. respondent or his counsel makes an opening statement, explaining why he believes that the charges against respondent are not legally founded;

3. complaint counsel presents the evidence against the respondent;

4. respondent or his counsel cross examines;

5. respondent or his counsel presents evidence;

6. complaint counsel cross examines;

7. complaint counsel rebuts the respondent's evidence; and

8. each party makes closing statements. The complaint counsel makes the initial closing statement and the final statement.

H. The board may impose reasonable time limits on the parties provided that such will not unduly prejudice the rights of the parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:509 (June 1990), amended, LR 41:

### **§9923. Evidence; Burden of Proof**

A. - E. ...



F. Burden of Proof. Any final decision of the board shall be supported by a preponderance of the evidence presented during the administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:509 (June 1990), amended, LR 41:

#### **§9925. Informal Disposition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:510 (June 1990), repealed, LR 41:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rules and amendments on the family has been considered. It is not anticipated that the proposed rules and amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed rules and amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed rules and amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed rules and amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed rules and amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

#### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed rules and amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 21, 2015. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on October 26, 2015, at 2:30 p.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

#### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice.

Cecilia Mouton, M.D.  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Physician Practice; Complaints and Investigations; Adjudication**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

In conformity with Act 441 of the 2015 Session of the Louisiana Legislature, which amended the Louisiana Medical Practice Act by, among other items, enacting R.S. 37:1285.2, the Board of Medical Examiners proposes to adopt rules governing investigations and complaints (LAC 46:XLV Chapter 97), amend certain sections of its existing rules on adjudication (LAC 46:XLV Chapter 99) and make other changes consistent with the new law. All substantive changes with a fiscal impact are explained below.

The proposed rule will result in an estimated cost of \$422,429 in FY 16 and recurring costs of approximately \$340,000 beginning in FY 17. Estimated costs are attributable to: the need to hire a physician consultant separate from the physician executive director to conduct investigations (\$246,901 – base salary \$175,000 per year + \$64,750 retirement for state employees + \$4,613 group insurance per year + \$2,538 Medicare contribution = \$246,901 salary package) and a compliance investigator to monitor investigations, provide notice and insure compliance with other procedural requirements (\$74,240 – base salary \$50,000 per year + \$18,500 retirement for state employees + \$5,015 group insurance per year + \$725 Medicare contribution = \$74,240 salary package). The Board will also incur one-time costs to acquire a new software system to properly track and monitor investigations and complaints (\$100,000). Publication costs associated with notice (\$681) and promulgation (\$607) of the proposed rules and amendments are estimated at a combined total of \$1,288 in FY 16, for a total fiscal impact in FY 16 of \$422,429 (\$246,901 + \$74,240 + \$100,000 + \$1,288 = \$422,429). Recurring costs in FY 17 are estimated at \$339,601 (physician consultant \$256,592 + compliance investigator \$77,009 + \$6,000 software maintenance) and in FY 18 will be \$352,561 (physician consultant \$266,672 + compliance investigator \$79,889 + \$6,000 software maintenance). Out year estimates assume a 4% annual increase in personal services. Other than the initial and rule publication costs during the year FY 16, and recurring costs in following years, it is not anticipated that the proposed rules and amendments will have further impact on the Board or any other state or local governmental unit, inclusive of adjustments in workload and paperwork requirements.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

It is not anticipated that the proposed rules and amendments will have a material effect on costs, paperwork or workload of physicians, nor on receipts and/or income of licensees or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is not anticipated that the proposed rules and rule amendments will have any impact on competition or employment in either the public or private sector.

Cecilia Mouton, M.D.  
Executive Director  
1509#052

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLV. Medical Professions**

**Subpart 4. Administrative Provisions**

**Chapter 83. General Information**

**Subchapter B. Board Organization**

**§8315. Executive Director; Director of Investigations**

A. No individual shall simultaneously hold the positions of executive director and director of investigations for the board nor shall the executive director serve as an investigator on any complaint received or initiated by the board with respect to a physician. Each of these positions may be filled by the board on an interim basis; however, if a position remains vacant for a period of six months, the board shall notify its legislative oversight committees of such fact and its plans and anticipated time frame within which to fill the position.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 1261-1292.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLV. Medical Professions**

**Subpart 5. Rules of Procedure**

**Chapter 97. Complaints and Investigations**

**§9707. Complaint Processing**

A.-B. ...

~~C. To obtain evidence of violations of the law or assist in a review or investigation the executive director or a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, such subpoenas as may be required to obtain documents and other information, the appearance of witnesses or sworn testimony.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

**§9709. Preliminary Review**

A. ...

B. During a review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1. documents and information which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exist to warrant formal investigation may be gathered and secured. To assist in a review a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, subpoenas to obtain medical, hospital and pharmacy records and records from law enforcement, state and federal agencies. Affidavits may be obtained to preserve the testimony of a complainant and complaint witnesses;

2.-E. ...

F. At the conclusion of a preliminary review a determination shall be made as to whether the complaint is jurisdictional and there is sufficient cause for investigation. If the complaint:

1. is not jurisdictional or there is insufficient cause for investigation, a report and recommendation shall be submitted to the board to close the complaint without investigation. If approved by the board, the complainant and the licensee, if the licensee was notified of the preliminary review, shall be notified of the disposition. If not approved by the board, ~~a formal investigation shall be commenced in accordance with §9711 of these rules~~ the board shall direct the board's staff to undertake such additional review as may be necessary or indicated within a specified period of time. A complaint closed after preliminary review shall not be considered an investigation by the board and need not be reported as such by a licensee on subsequent renewal applications to the board.

2.-F.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

**§9711. Formal Investigation**

A.-B. ...

C. Once a formal investigation is initiated by the board, an investigation shall be undertaken to determine whether or not there is sufficient information and evidence to indicate that a violation of the law has occurred. To assist in a formal investigation subpoenas may be issued in

the same manner as set forth in §9709B to obtain any of the items listed therein and any other documents and other information, the appearance of witnesses and sworn testimony.

D.-F. ...

G. If the investigation provides sufficient information and evidence to indicate that a violation of the law has occurred, an administrative complaint may be filed with the board, pursuant to Chapter 99 of these rules, provided one or more of the following conditions exist:

1. a draft administrative complaint, in the form and content specified in §9903B of these rules, has been mailed or provided to the licensee accompanied by a letter providing a reasonable opportunity for a conference to show compliance with all lawful requirements for the retention of the license without restriction, or to show that the complaint is unfounded as contemplated by R.S. 49:961(C); however, the licensee fails to respond to the complaint and letter, waives the opportunity, or the response does not satisfactorily demonstrate lawful compliance or that the complaint is unfounded. Such conference shall be attended only by the board's director of investigations or the investigator assigned to the matter and legal counsel, if any, and by the physician and the physician's counsel, if any;

2.-3. ...

H. Formal investigations shall be completed within ~~thirty-six~~ twenty-four months after initiated by the board. However, this period may be increased by the board for satisfactory cause and no complaint shall be dismissed solely because a formal investigation was not completed within this period. This period shall also not apply to any investigation pending on July 1, 2015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR